

Amendment No. 1 to HB3588

Coleman
Signature of Sponsor

AMEND Senate Bill No. 3519

House Bill No. 3588*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 35, is amended by adding the following language as a new section:

§ 35-5-117.

(a) Prior to the first publication of a notice of a foreclosure sale of a deed of trust, mortgage or other lien securing the payment of money or other thing of value on an owner-occupied residence pursuant to § 35-5-101, the lender, trustee or other creditor shall send, or arrange to have sent, to the debtor a notice of the right to foreclose. The lender, a servicer, an agent of the lender or servicer, or, at the discretion of the lender, the trustee may send such notice.

(b) The notice of the right to foreclose shall be sent not less than sixty (60) days prior to the first publication required by § 35-5-101.

(c) The notice of the right to foreclose shall be sent to the last known mailing address of:

(1) The principal debtor; and

(2) Any co-debtor or guarantor, but only if the address of the co-debtor or guarantor is different from the address of the principal debtor.

(d) The notice of the right to foreclose shall be sent by regular mail. The notice of the right to foreclose shall be effective upon deposit with the United States postal service and shall be effective for any foreclosure sale initiated by publication pursuant to § 35-5-101, after sixty (60) days and within twelve (12) months of sending such notice the of right to foreclose pursuant to this subsection (d).

(e) The notice of the right to foreclose shall be sent in a separate mailing.

(f)

(1) The notice of the right to foreclose shall contain sufficient information to permit the debtor to contact the lender, servicer or creditor and federal government officials responsible for any existing loan modification program to discuss the account and the options that may be available to the debtor.

(2) The lender, servicer or creditor shall include in the notice of the right to foreclose the internet web site address of the department of housing and urban development and may include the internet web site address of any other governmental agency that is operating existing loan modification programs, of which the lender, servicer or creditor is aware.

(3) The lender, servicer or creditor shall provide such information about persons authorized by the lender, servicer or creditor to assist debtors in applying for such loan modification programs.

(4) The notice shall include content in a form similar to the following; provided, however, that the lender, servicer or creditor may delete all references in the notice to federal loan modification programs if no such programs are in existence or the loan would not qualify for any such programs at the time the notice the of right to foreclose is mailed to the debtor:

NOTICE OF THE RIGHT TO FORECLOSE

Date of Notice: _____

The holder of the mortgage, deed of trust or other lien on your property has the right to begin the process of foreclosing on the debt and may sell your property at public auction to satisfy the debt at any time after sixty (60) days from the date of this notice of the right to foreclose for a period of twelve (12) months without sending you another notice the of right to foreclose.

You should IMMEDIATELY contact the lender, servicer or creditor listed below to discuss repayment options for which you may qualify, or if none are available, foreclosure alternatives such as short sale or deed in lieu of foreclosure. Failure to satisfy your payment obligations may result in loss of your home.

Debt counseling may be available in your area. You can determine if debt counseling is available in your area and locate an approved counselor at the U.S. Department of Housing and Urban Development (HUD) web site at www.HUD.gov.

You may also be eligible for certain Federal loan modifications programs. You should review your options under these programs immediately at the Department of Housing and Urban Development web site (www.HUD.gov) and or at other applicable websites, and consult your lender. If you wish to participate in one of these programs, you must make timely application as required by the program. You should notify the lender, servicer or creditor of your interest in participating in one of these programs.

YOU MUST ACT IMMEDIATELY IF YOU WISH TO TRY TO SAVE YOUR HOME

Name of creditor: _____
Address of creditor: _____
Phone: _____ Fax: _____
Web site and
e-mail
address: _____
Contact
person: _____
Government Loan Modification Program Web site and contact information: _____

(g) For purposes of this section, "owner-occupied residence" means a one-to-four family residence purchased and occupied as the principal residence of the debtor.

(h) The provisions of this section shall not apply to any:

- (1) Judicial sale ordered or conducted by any court;
- (2) Sale conducted by a trustee in bankruptcy;
- (3) Sale conducted after a bankruptcy petition is filed and the automatic stay has been lifted by the bankruptcy court; or
- (4) Sale conducted if the borrower has obtained a prior loan modification or refinance before July 1, 2010.

(i) The giving of the notice of the right to foreclosure shall be set forth in any notice of foreclosure and recited in any deed memorializing the sale and shall be conclusory on third parties without notice of any actual defect in the notice.

(j) If the trustee determines at the time of sale that the notice of the right to foreclose was not sent to the debtor as required by subsection (a) and upon written request of the debtor, the trustee shall postpone the sale for not less than thirty (30) days.

SECTION 2. This act shall take effect on July 1, 2010, and shall apply to any applicable foreclosure that is initiated by publication in accordance with § 35-5-101, on or after September 1, 2010, the public welfare requiring it.